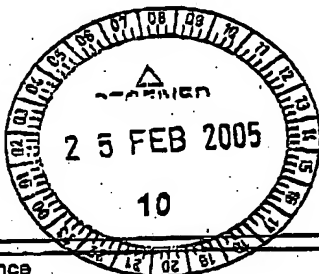


PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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1140 Prospect Street
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AFRIQUE DU SUD



PCT
Confirmation of the fax

WRITTEN OPINION
(PCT Rule 66)

sent on 10.02.05

Date of mailing
(day/month/year) 15.02.2005

Applicant's or agent's file reference
F17542 MAC

REPLY DUE within 1 month(s)
from the above date of mailing

International application No.
PCT/B 03/04489

International filing date (day/month/year)
10.10.2003

Priority date (day/month/year)
17.10.2002

International Patent Classification (IPC) or both national classification and IPC
A61B17/04

Applicant
RÖSCH, Theodor Gerhard

1. This written opinion is the first drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☒ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 17.02.2005

Name and mailing address of the international preliminary examining authority:



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I. Basis of the opinion

1. With regard to the elements of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-15

as originally filed

Claims, Numbers

1-17

as amended (together with any statement) under Art. 19 PCT

Drawings, Sheets

1/5-5/5

as originally filed

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☒ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

see separate sheet

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

☐ the entire international application,

☒ claims Nos. 1-3

because:

☒ the said international application, or the said claims Nos. 1-3 relate to the following subject matter which does not require an international preliminary examination (specify):

see separate sheet

☐ the description, claims or drawings (*Indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the said claims Nos.

2. A written opinion cannot be drawn due to the failure of the nucleotide and/or amino acid sequence listing to comply with the Standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N) Claims 5

Inventive step (IS) Claims 5

Industrial applicability (IA) Claims 5

2. Citations and explanations

see separate sheet

Section I

The amendments filed under Article 19 PCT introduce subject-matter which extends beyond the content of the application as filed, contrary to Article 34(2)(b) PCT:

- No basis is apparent for the subject-matter of new claim 4.
- Claim 6 defines in combination a body reservoir and a suture element inlet opening into the fluid flow path at an intermediate position which is not originally disclosed.
- Present claim 10 includes a releasable securing means which is originally disclosed only in combination with a suture element feed path intersecting the fluid flow path at a position intermediate the fluid inlet and the outlet (see original claims 13 and 15-17).

This opinion has been established as if these amendments had not been made (Rule 70.2(c) PCT). Accordingly, the following sections relate to the subject-matter of present claims 1-3 and 5 only.

Section III

Claims 1-3 relate to subject-matter mentioned in Rule 67.1(iv) PCT, in particular to a method of therapeutical and surgical treatment of the human or animal body since, according to the description (see e.g. p. 8, para. 1; p. 12, para. 2), the claimed method of feeding a suture element is clearly performed during endoscopic surgery with the claimed device being surgically inserted in the body to be treated. Under terms of Article 34(4)(a)(i) PCT an International Preliminary Examining Authority is not required to carry out an examination of such claims.

Section V

- 1 Reference is made to the following document (D) cited in the International Search Report:

D1: US-A-5 569 270A

**WRITTEN OPINION
SEPARATE SHEET**

International application No. PCT/IB 03/04489

2 Article 33 PCT

Document D1 (col. 3, l. 50 to col. 4, l. 52; figs. 3, 4) discloses all features of claim 5 except for the suture element inlet opening into the fluid flow path at a position intermediate the fluid inlet and the outlet. The subject-matter of claim 5 is therefore novel (Article 33(2) PCT).

The problem to be solved by the claimed invention is regarded as to enhance the fluid driven suture displacement.

An intermediate suture element inlet, as proposed in claim 5, is neither known from, nor rendered obvious by, the available prior art. Consequently, the subject-matter of claim 5 meets the requirements of Article 33 PCT.

Remarks

- 1 Independent apparatus claims should have been drafted in the two-part form in accordance with Rule 6.3(b) PCT.
- 2 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- 3 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in D1 is not mentioned in the description, nor is this document identified therein.
- 4 This opinion has been drawn up according to your request filed with telefax of 1 February 2005 and will thus lead to a late issue of the corrected IPER